IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1550 OF 2005

The Sangli Bank Ltd. and others ...Applicants

vs.

The State of Maharashtra and another ...Respondents

Mr.A.P.Mundargi, Senior Counsel with Mr.Rajendra Sorankar for the Applicants
Mr.S.V.More, A.P.P. for State
Ms Revati Mohite-Dere for Respondent No.2

CORAM: A.S.OKA,J.
DATE : NOVEMBER 10,2006.

ORAL JUDGMENT:

1. Rule. The Respondent No.2 waives service. Learned A.P.P. waives service for Respondent No.1. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. Heard learned Senior Counsel appearing for the Applicant and the learned Counsel for the second Respondent. The second Respondent is the complainant in a private complaint alleging the commission of offences under sections 209, 406, 409, 420, 465 read with section 34 of the Indian Penal Code. The Applicants are arraigned as accused in the said complaint. Initially, an order was passed by the learned Magistrate under section 156 (3) of the Code of Criminal Procedure, 1973. After perusing the report of the police, on 20th October 2003, the learned Magistrate issued process against the Applicants under sections 209,420,406,409 and 465 read with section 34 of the Indian Penal Code. Criminal Revision Application No.930

of 2003 was preferred by the Applicants before the Sessions Court by which exception was taken to the order passed by the learned Magistrate of issuing process. The Revision Application has been dismissed by holding that the same is not maintainable. Therefore, the prayer in this Application under section 482 of the said Code of 1973 is for quashing the order issuing process.

3. The learned Senior Counsel for the Applicants apart from merits of the case submitted that the Revision Application preferred by the Applicants has been rejected on the ground that the same was not maintainable. He submitted that the view taken by the learned Additional Sessions Judge is completely contrary to the law laid down by this Court.

4. The learned Counsel for the second Respondent opposed the Application and submitted that no interference is called for with the impugned order.

5. I have considered the submissions made by the learned Counsel for the parties. The learned Additional Sessions Judge held that in view of the decision of the Apex Court in case of Adalat Prasad Vs. Rooplal Jindal and others [2004 (4) Mh.L.J. page 274] as well as in the case of Subramanium Sethuraman Vs. The State of Maharashtra and another [2005 (1) Mh.L.J. page 626], Revision Application under section 397 of the said Code for challenging the order issuing process was

not maintainable.

6. The learned Single Judge of this Court in the case of V.K.Jain Vs. Pratap Padode [2005 (3) Mh.L.J. page 778) after considering the view of the Apex Court in case of Adalat Prasad (supra) and Subramanium Sethuraman (supra) came to the conclusion that a Revision Application under section 397 of the said Code was maintainable against the order issuing process. In view of the said decision of the learned Single Judge, obviously, the view taken by the Additional Sessions Judge was erroneous. The Revision Application filed by the Applicants was maintainable under section 397 of the said Code. The Revision Application ought to have been heard on merits.

7. Therefore, the impugned order will have to be set aside and the Revision Application will have to be remanded to the concerned Court for deciding the same afresh. As the challenge to the order issuing process will be considered in the Revision Application, the said challenge need not be considered in this Application.

8. Hence, I pass the following order :

i) The impugned Judgment and Order dated 19th January 2005 passed by the Additional Sessions Judge, Pune in Revision Application No.930 of 2003 is quashed and set

aside and the Revision Application is restored to file.

ii) Parties are directed to appear before the learned Sessions Judge, Pune on 4th December 2006 at 11.00 a.m. The learned Judge may himself take up the Revision Application for hearing or may assign it to any other Judge considering the administrative convenience.

iii) The Revision Application shall be decided afresh in the light of the observations made in this order on its own merits. The Revision Application shall be decided as expeditiously as possible and preferably within a period of six months from 4th December 2006.

vi) Till the disposal of the Revision Application by the Sessions Court, the proceeding of the Criminal Complaint no.4731 of 2002 will remain stayed.

v) All contentions of both the parties on merits of the pending complaint are expressly kept open.

vi) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE